

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

Darren Devine,

Case No. 1:11 CV 00347

Petitioner,

MEMORANDUM OPINION
AND ORDER

-vs-

Terry Tibbals, Warden,

JUDGE JACK ZOUHARY

Respondent.

This Court has reviewed the Report and Recommendation (“R&R”) of the Magistrate Judge filed February 21, 2012 (Doc. No. 11). The R&R recommends this Court deny the Petition because the state appellate court reasonably found no factual basis exists for Petitioner Darren Devine’s assertion that his counsel was unprepared, and because the trial court conducted a plea colloquy finding Petitioner entered his guilty plea “knowingly, intelligently, and voluntarily” (Doc. No. 11 at 16–17). Under the relevant statute, 28 U.S.C. § 636(b)(1):

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.

The failure to file objections within the time frame set forth in the statute constitutes a waiver of *de novo* review by the district court. *See United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005); *Thomas v. Arn*, 474 U.S. 140 (1985).

Petitioner Darren Devine’s deadline for filing objections to the R&R was March 6, 2012. It is now March 9, 2012 and Petitioner has yet to file objections. The R&R accurately states the facts and law, and this Court adopts it in its entirety. Accordingly, the Petition is denied and this action is

dismissed pursuant to 28 U.S.C. § 2243. Further, because Petitioner has not made a substantial showing of the denial of a constitutional right, this Court finds there is no basis on which to issue a certificate of appealability. 28 U.S.C. § 2253.

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

March 9, 2012